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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,560	09/21/2007	Klaus Grohe	D4700-00425	4206

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DUANE MORRIS LLP - Philadelphia
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

YOUNKINS, KAREN L

ART UNIT	PAPER NUMBER
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3751

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09/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,560	Applicant(s) GROHE, KLAUS	
	Examiner KAREN YOUNKINS	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, and 7-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is responsive to the amendment filed 6/8/2009. Responsive to the amendment, claims 2 and 4-6 have been cancelled. Claims 1, 3, and 7-19 are pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 12 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The specification states “the wall bracket can exhibit an additional hose guide which is preferably located behind the wall rod, thus, between the wall rod and the wall.” In the response filed 6/8/2009, applicant has amended the claim language to read “the wall support and the mounting bracket form a hose guide for positioning the outlet hose”. The hose guide disclosed in the specification as originally filed is not described as being formed by the mounting bracket. Further, the hose guide in the specification discloses the hose guide is preferably located between the wall rod and the wall, but as

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is clearly shown in the drawings the mounting bracket is not disposed between the wall rod and the wall but rather is disposed on the non-wall side of the wall rod.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12, 16, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. With reference to claims 12 and 18, it is unclear how the wall support and the mounting bracket form a 'hose guide' for positioning the hose. The hose is positioned within the mounting bracket for use, but it is unclear how in use the combination of the wall support and mounting bracket perform the claimed function of "positioning the hose". Further, claim 18 requires that the hose guide, being formed of both the wall support and mounting bracket as set forth in claim 12, to be located behind the wall rod. However, it is shown in the drawings that the mounting bracket is located in front of the wall rod and the wall support is located behind the wall support. For the purposes of examination, the examiner assumes the applicant intends to claim the mounting bracket is located in front of the wall rod and the wall support is located behind the wall support as supported by the specification and the drawings.

8. In reference to claim 16, as currently written claim 16 is dependent on claim 4 however claim 4 has been cancelled. For the purposes of examination, the examiner assumes claim 16 is intended to be dependent on claim 1.

Claim Rejections - 35 USC § 102

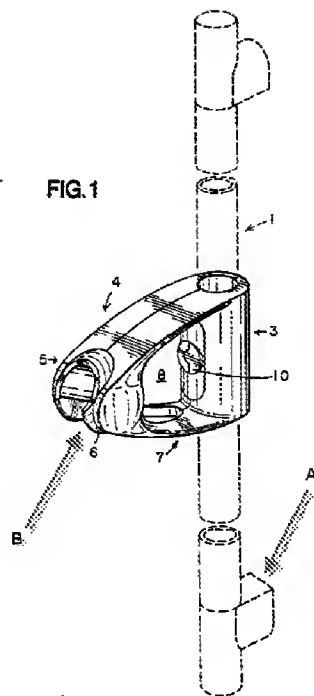
9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 3, 12, 14-16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,277,391 to Haug et al. (Haug).

11. Regarding Claim 1, 3 and 14-16, Haug teaches a wall rod 1, with a wall support A that fixes the wall rod to the wall at a space from the wall. There is a mounting bracket 4, which is curved and pivotally attached to the wall rod 1 for carrying/inserting a shower attachment. The mounting bracket forms an elongation of the wall rod. The mounting bracket comprises an open pipe 5, with a cone 6, and an n opening forming an slot B. The mounting bracket is pivotal about the longitudinal axis of the wall rod and an axis parallel to the longitudinal axis. The centerline of the mounting bracket lies in the plane that includes the longitudinal axis.



12. Regarding claims 12 and 18, the wall support A located behind the wall rod and the mounting bracket located in front of the wall rod form a 'hose guide' in so much as the instant application does. In use a hose is 'guided' into the mounting bracket for storage.

13. The initial statement of intended use (claim 1 line 1) and all other functional limitations thereto, have been fully considered but do not appear to impose any patentably distinguishing structure over that disclosed by Haug.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

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15. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No.5,833,192 to Buhrman.

16. As previously discussed in pp-11 above, further Haug discloses all claimed features except for a double-bent wall support that offsets the wall rod by at least half the diameter of the hose leading to the shower attachment. However, Buhrman teaches double-bent wall supports 42/44 and the wall rod is at least half the diameter D of the hose H. It would have been obvious to one of ordinary skill in the art to include the double bent wall support to allow for extra support of the wall rod. It would have also been obvious to keep the distance at least half the diameter because it allows for the hose to go behind the rod to keep it out of the way of the user.

17. Claims 9-11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No. 4,726,552 to Warshawsky.

18. As previously discussed in pp-11 and in reference to claim 9, Haug discloses all claimed features except for a swivel bearing located in the wall support. However, Warshawsky teaches a wall support 80/90, which includes a swivel bearing 140 for a shower outlet holder 60. It would have been obvious to one of ordinary skill in the art to replace the bearing in Haug with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod.

19. As previously discussed in pp-18 and regarding Claims 10, 11 and 17, Haug teaches a stepped/indexed swivel motion that would prevent the mounting bracket from reaching the wall.

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20. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No. 4,274,400 to Baus.

21. As previously discussed in pp-11 above and in reference to claim 13, Haug discloses all claimed features except for an additional mounting bracket. However, Baus discloses multiple mounting brackets 7/47. It would have been obvious to one of ordinary skill in the art to include two mounting brackets in the Haug system because the user could have the shower head placed in an overhead arrangement, or lower for the lower body. This provides extra versatility for the shower and the user. Regarding Claim 19, Haug discloses that the bracket can be adjusted in height.

Response to Arguments

22. Applicant's arguments filed 6/8/2009 have been fully considered but they are not persuasive.

23. On pages 5-7, the applicant has asserted that the amendments to the claim language "undercut slot" and "somewhat perpendicular surface" overcome the objection to the drawings. The examiner agrees and as such the drawings are not objected to in the current action.

24. On page 7, the applicant has asserted in reference to claim 1 that the Haug reference does not teach the mounting bracket continuing and extending the wall rod. However, the examiner respectfully submits that the mounting bracket of Haug 'continues' and 'extends' the wall rod to the extent claimed. The mounting bracket is an extension on the wall rod that 'continues' outwardly from the wall, just as in the instant application.

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25. On page 8, the applicant has asserted with reference to claims 7 and 8 that the Burhman reference does not teach a double bent wall support. However, it is respectfully submitted that the wall support of Burhman does in fact have two bends (one at 42 in figure 1 and one to the side of 42 between 42 and 44 in figure 2) therefore the support is a 'double bent' wall support.

26. On page 8 and with reference to claims 9-11 and 17, the applicant has asserted that there is no apparent relationship between the subject matter of Warshawsky and a mounting bracket. However, it is respectfully submitted that while the subject matter of Warshawsky involved a lamp, it is well known in the art that a wall mounting bracket may be used in many different applications. It is further asserted by the applicant that there is no articulated justification of record to explain how a person skilled in the art might progress from Haug and Warshawsky to the claimed invention. However, it is respectfully submitted that an articulated justification of record appears in the previous office action as well as in pp-18 and pp-19 above.

27. Applicant's arguments with respect to claims 12 and 18 have been considered but are moot in view of the new ground(s) of rejection.

28. On pages 9 and 10, the applicant has asserted with respect to claims 13 and 19 that the combination of Haug and Baus does not meet the claimed invention as a whole. However, it is respectfully submitted that with respect to claims 13 and 19 the combination of Haug and Baus does teach the claimed invention. See the discussion in pp-21 above.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./

Examiner, Art Unit 3751

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751